

25

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

DIVISION BENCH

**CORAM : HON'BLE SHRI S.R. NAYAK, CJ
& HON'BLE SHRI D.R. DESHMUKH, J.**

Misc. Appeal NO.905 OF 2003

APPELLANT

Smt. Nirmala Bai, W/o. Tilendra Kumar Shrivastava, Aged about 44 years,
Both R/o. Gurucharan Nagar Fafadih,
P.S. Gangai, Raipur (C.G.)

VERSUS

RESPONDENTS
DRIVER

1. Kirtan Gorandi, S/o Kariya Gorandi
Aged 40 years, R/o. Gandhi Nagar
District Balangir (Orissa)
At present Hora Travels, New Bus
Stand, P.S. Civil Line, Raipur.

OWNER

2. Nareshchandra Pati, S/o Rameshwar
Pati, R/o Rameshwar Nagar Balangir
(Orissa)

INSURER

3. The Oriental Insurance Company Ltd.
Through Divisional Manager
Divisional Office, D.O. 2
Devendra Nagar, Raipur (C.G.)

Present: Mr. Abhay Tiwari, learned counsel for the appellant.
Mr. Vinay Harit, learned Sr. Advocate with Mr. Narayan
Shrivastava, learned counsel for respondent No.3.

ORAL ORDER

(Passed on 17th January 2006)

The following oral order of the Court was passed by

S.R. Nayak, C.J. :

Originally, this appeal was preferred by both the parents of the deceased seeking more compensation. During the pendency of the

appeal, first appellant – father died and Smt. Nirmala Bai who was arrayed as second appellant initially has become the sole appellant.

(2) We have heard learned counsel for the parties. It was contended by learned counsel for the appellant that the deceased was earning his livelihood by opening a Kirana Shop in Raipur city and he was earning roughly Rs.4,000 – 4,500/- per month out of his avocation and therefore, the learned MACT is not justified in taking the income of the deceased at the notional rate of Rs.15,000/- per annum for assessing loss of dependency. Learned counsel for the appellant would also contend that the MACT is not justified in not awarding any compensation under the conventional heads and towards funeral expenses.

(3) Before the MACT, the father of the deceased was examined as PW-1 and in his deposition he stated that his son had a Kirana Shop and he was earning monthly income of Rs.4,000 - 4,500/-. Ofcourse, the testimony of PW-1 is self-interested testimony and therefore, much credence could not be given to such testimony. But, the fact remains that the deceased was earning his livelihood in a city like Raipur at the relevant point of time and had to support his father and mother. Therefore, such a man earning monthly income of atleast Rs.2,500 – 3,000/- could not be ruled out and could not be regarded as something speculative or hypothetical. Therefore, we tend to take the monthly income of the deceased for the purpose of assessing loss of dependency at Rs.2,500/-. On the date of accident and demise of the son, the mother was aged 42 years and, therefore, appropriate multiplier to be applied for assessing loss of dependency would be multiplier 15.

If we deduct half of the income of the deceased towards personal expenses of the deceased, the total loss of dependency would come to Rs.2,25,000/- (Rs.1,250/- x 12 x 15). In a death case, loss of love and affection and 'loss of estate' are the conventional heads under which the compensation is required to be awarded. Furthermore, even the funeral expenses incurred by the family of the deceased should be reasonably compensated. In that view of the matter, we award a sum of Rs.20,000/- towards loss of love and affection and Rs.20,000/- towards loss of estate and Rs.5,000/- towards funeral expenses.

(4) In the result and for the foregoing reasons, we allow the appeal in part and in substitution of the impugned award, we award a total compensation of Rs.2,70,000/- under the following heads :

(i)	Loss of dependency	--	Rs.2,25,000/-
(ii)	Loss of love and affection	--	Rs. 20,000/-
(iii)	Loss of estate	--	Rs. 20,000/-
(iv)	Funeral expenses	--	Rs. 5,000/-
Total		--	Rs.2,70,000/-

with interest @ 6% per annum from the date of the claim petition till payment. The insurance company shall deposit the balance of the compensation before the MACT within a period of six weeks from today. On such deposit being made, the MACT shall deposit 50% of the compensation with interest accrued thereon in any nationalized bank or postal savings account, initially for a period of 5 years and rest of the compensation be paid to the claimant – mother. Parties shall bear their respective costs in this appeal.

Sd/-
Chief Justice

Sd/-
Dilip Raosaheb
Deshmukh
Judge